

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

BILLIE MERCER, Individually and as Heir
To the Estate of Larry Jackson, Jr.; and
Larry Mercer, Individually, and as Heir to
The Estate of Larry Jackson, Jr.

Plaintiffs

VS.

CHARLES KLEINERT, and
THE CITY OF AUSTIN
Defendants

CIVIL ACTION NO. 1-13-cv-00830

DEFENDANT THE CITY OF AUSTIN'S
ANSWER TO PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE UNITED STATES DISTRICT JUDGE LEE YEAKEL:

COMES NOW, the City of Austin, Defendant, (hereinafter “the City”) and respectfully files its answer to Plaintiffs’ Original Complaint.

I. PARTIES

1. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 1.
2. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 2.
3. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 3.
4. The City denies that Charles Kleinert (“Kleinert”) is a member of the Austin Police Department because he is no longer a member of the Austin Police Department. Otherwise the City admits the allegations in paragraph 4.

5. The City denies the statement in paragraph 5 that the City may be served by service on Dan Richards. Otherwise the City admits the allegations in paragraph 5.

II. JURISDICTION AND VENUE

6. The City admits the allegations in paragraph 6.

7. The City admits the allegations in paragraph 7.

8. The City denies the allegation in paragraph 8 that Defendants caused the wrongful death of Larry Jackson Jr. (“Jackson”). Otherwise the City admits the remaining allegations in paragraph 8.

9. The City admits the allegations in paragraph 9.

III. BACKGROUND

A. Introduction

10. The City denies the allegation that Jackson was the son of Larry Mercer. Otherwise, the City lacks knowledge or information sufficient to form a belief about the truth of the allegation in paragraph 10.

11. The City admits that on July 26, 2013, Jackson died as the result of a discharge from Kleinert’s weapon. Otherwise the City denies the remaining allegations in paragraph 11.

12. The City denies the allegations in paragraph 12.

B. The Shooting

13. The City admits that on July 26, 2013, Jackson went to the Benchmark Bank in central Austin. Otherwise the City denies the remaining allegations in paragraph 13.

14. The City admits that Benchmark Bank was closed due to a robbery. Otherwise the City is without knowledge or information sufficient to form a belief about the truth of the remainder of allegations in paragraph 14.

15. The City admits the allegations in paragraph 15.
16. The City admits the allegations in paragraph 16.
17. The City admits that Kleinert spoke to Jackson outside of the bank. Otherwise, the City denies the allegations in paragraph 17.
18. The City admits that Kleinert spoke to Jackson outside of the bank. Otherwise, City denies the allegations in paragraph 18.
19. The City denies the allegations in paragraph 19.
20. The City admits that Jackson ran from the bank. Otherwise the City denies the remaining allegations in paragraph 20.
21. The City admits that Kleinert pursued Jackson. Otherwise the City denies the remaining allegations in paragraph 21.
22. The City admits that a civilian transported Kleinert at his request. Otherwise, the City denies the remaining allegations in paragraph 22.
23. The City denies the allegations in paragraph 23.
24. The City admits that Kleinert could see Jackson.
25. The City admits that Kleinert exited the vehicle. Otherwise the City denies the remaining allegations in paragraph 25.
26. The City denies the allegations in paragraph 26.
27. The City admits that Jackson attempted to evade detention. Otherwise the City denies the remaining allegations in paragraph 27.
28. The City admits that Kleinert unholstered his weapon. Otherwise, the City denies the allegations in paragraph 28.
29. The City denies the allegations in paragraph 29.

30. The City denies the allegations in paragraph 30.

31. The City admits that Jackson died as the result of a discharge from Kleinert's weapon. Otherwise the City denies the allegations in paragraph 31.

32. The City admits that Kleinert did not have radio communication. Otherwise the City denies the allegations in paragraph 32.

33. The City denies the allegations in paragraph 33.

IV. FEDERAL CAUSES OF ACTION

A. Excessive Force Against Defendant Kleinert

34. Paragraph 34 contains no factual allegation, therefore requires no response.

35. The City lacks knowledge or information sufficient to form a belief about the truth of the allegations in paragraph 35.

36. The City admits that Jackson died as the result of a discharge from Kleinert's weapon. Otherwise the City denies the allegations in paragraph 36.

37. The City admits that Jackson died as the result of a discharge from Kleinert's weapon. Otherwise the City denies the allegations in paragraph 37.

38. The City admits that Jackson died as the result of a discharge from Kleinert's weapon. Otherwise the City denies the allegations in paragraph 38.

39. The City denies the allegations in paragraph 39.

B. 42 U.S.C. §1983 Claim Against The City of Austin

40. Paragraph 40 contains no factual allegation, therefore requires no response.

41. The City lacks knowledge or information sufficient to form a belief about the truth of the allegation that Kleinert was acting under color of law as an APD detective. Otherwise the City denies the remaining allegations in paragraph 41.

42. The City denies the allegations in paragraph 42.

43. The City denies the allegations in paragraph 43.

44. The City denies the allegations in paragraph 44.

V. CLAIM FOR DAMAGES

45. The City denies the allegations in paragraph 45.

VII. ATTORNEYS' FEES

46. The City denies the allegations in paragraph 46.

VIII. JURY REQUEST

47. Paragraph 47 contains no factual allegation, therefore requires no response. The City of Austin also requests a jury trial.

IX. PRAYER FOR RELIEF

48. The City denies the allegations in paragraph 48, including subsections (a) through (e).

IX. THE CITY'S AFFIRMATIVE DEFENSES

49. The City has full sovereign immunity both from suit and from liability for the allegations of state law violations, if any, made by the Plaintiffs.

50. The City asserts the protections and limitations of the Texas Tort Claims Act, including, but not limited to §101.023, §101.024, §101.026, §101.055, §101.056, §101.057, and §101.106.

51. The City asserts the affirmative defense of contributory negligence. Specifically, Larry Jackson, Jr. failed to exercise ordinary care for his safety. His own actions contributed at least fifty-one percent to his and Plaintiffs' injuries and damages, if any.

52. To the extent applicable, the City asserts the qualified or official immunity of Kleinert.

53. The City asserts that Larry Mercer lacks standing to bring suit or recover any relief from the City in any capacity.

X. THE CITY'S PRAYER

WHEREFORE, PREMISES CONSIDERED, the City prays that Plaintiffs take nothing by their suit, and for attorneys' fees, costs, and any such other and further relief, general and specific, at law and in equity, to which this Defendant may show itself to be justly entitled.

Respectfully submitted,

RICHARDS RODRIGUEZ & SKEITH, LLP
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A handwritten signature in black ink, appearing to read 'CER', is positioned above a horizontal line.

DANIEL R. RICHARDS
State Bar No. 00791520
CLARK RICHARDS
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ATTORNEYS FOR DEFENDANT
CITY OF AUSTIN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 18, 2013, a true and correct copy of the foregoing document has been electronically filed on the CM/ECF system, and a copy forwarded to the following parties as follows:

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A handwritten signature in black ink, appearing to read 'CLARK' in a stylized, cursive script.

CLARK RICHARDS